



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2013-0787; FRL-9911-12-OAR]

Approval of States' Requests to Relax the Federal Reid Vapor Pressure Volatility Standard in Florida, and the Raleigh-Durham-Chapel Hill and Greensboro/Winston-Salem/High Point Areas in North Carolina

AGENCY: The Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve requests from Florida and North Carolina for the EPA to relax the Reid Vapor Pressure (RVP) Standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year in six counties in Florida, and in counties in the Raleigh-Durham-Chapel Hill Area (also referred to as the “Triangle Area”) and the Greensboro/Winston-Salem/High Point Area (also referred to as the “Triad Area”) in North Carolina. Specifically, the EPA is approving amendments to the regulations to change the RVP standard for six counties in Florida, and for the counties in the Triangle and Triad Areas from 7.8 pounds per square inch (psi) to 9.0 psi for gasoline. Additionally, the EPA is responding to adverse comments received for this action. The EPA has determined that these changes to the Federal RVP regulation are consistent with the applicable provisions of the Clean Air Act (CAA or Act).

DATES: This final rule will become effective on May 30, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA-HQ-OAR-2013-0787. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. N.W., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Rudolph Kapichak, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734)214-4574; fax number (734)214-4052; email address: kapichak.rudolph@epa.gov.

SUPPLEMENTARY INFORMATION:

Organization of this document. The following outline is provided to aid in locating information in this preamble.

Table of Contents

- I. General Information**
- II. Actions Being Taken**
- III. History of Gasoline Volatility Requirement**
- IV. The EPA's Policy Regarding Relaxation of Volatility Standards in Ozone Nonattainment Areas That Are Redesignated as Attainment Areas**

- V. The EPA’s Analysis of Florida's Request to Relax the Federal RVP Requirements in the State**
- VI. The EPA’s Analysis of North Carolina's Requests to Relax the Federal RVP Requirements in the Triangle and Triad Areas**
- VII. Response to Comments**
- VIII. Final Action**
- IX. Statutory and Executive Order Reviews**
- X. Legal Authority and Statutory Provisions**

Effective date. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the Federal Register. The EPA is issuing this final rule under CAA section 307(d)(1). Section 307(d)(1) states: “The provisions of section 553 through 557 . . . of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.” Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on May 30, 2014. APA section 553(d) allows an effective date less than 30 days after publication for a rule that “that grants or recognizes an exemption or relieves a restriction.” 5 U.S.C. 553(d)(1). This rule fits within that exception because it lifts the restriction on the introduction into commerce of gasoline with a RVP of greater than 7.8 psi sold in areas in Florida and North Carolina between June 1 and September 15 of each year. Because today’s action can be considered to relieve a restriction that would otherwise prevent the introduction into commerce of gasoline with a RVP of greater than 7.8 psi, the EPA is making this action effective on May 30, 2014.

I. General Information

Throughout this document, “the Agency” is used to mean the EPA.

Entities potentially affected by this rule are fuel producers and distributors who do business in Florida and in North Carolina. Regulated entities include:

Examples of potentially regulated entities	NAICS codes ^a
Petroleum refineries	324110
Gasoline Marketers and Distributors	424710 424720
Gasoline Retail Stations	447110
Gasoline Transporters	484220 484230

^a North American Industry Classification System (NAICS).

This table provides only a guide for readers regarding entities likely to be regulated by this action. You should carefully examine the regulations in 40 CFR 80.27 to determine whether your facility is impacted. If you have further questions, call the person listed in the FOR FURTHER INFORMATION CONTACT section of this preamble.

II. Actions Being Taken

This final rule approves a request from Florida to change the summertime RVP standard for Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas counties in Florida from 7.8 psi to 9.0 psi by amending the EPA’s regulations at 40 CFR 80.27(a)(2). Additionally, this final rule approves a request from North Carolina to change the summertime RVP standard for the Triangle and Triad Areas from 7.8 psi to 9.0 psi by amending the EPA’s regulations at 40 CFR 80.27(a)(2). The Triangle Area is comprised of Durham and Wake Counties, and the Dutchville Township portion of Granville County. The Triad Area is comprised of the counties of Davidson,

Forsyth and Guilford in their entirety, and the portion of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River.

In previous rulemakings, the EPA approved state implementation plan (SIP) revisions from Florida and North Carolina which provided technical analyses that demonstrated that removal of the Federal RVP requirements of 7.8 psi for gasoline sold between June 1 and September 15 of each year in the six counties in Florida, and the North Carolina Triangle and Triad Areas would not interfere with maintenance of the national ambient air quality standards (NAAQS) in these areas. For more information on Florida's SIP revision for the six Florida counties and the EPA's analysis of Florida's SIP revision refer to the January 6, 2014, final rule at 79 FR 573; on North Carolina's SIP revision for the Triangle Area refer to the January 2, 2014 final rule at 79 FR 47; and on North Carolina's SIP revision for the Triad Area refer to the January 24, 2014 final rule at 79 FR 4082.

As mentioned above, this final rule approves requests from Florida and North Carolina to change the summertime RVP standard for six Florida counties, and for the Triangle and Triad Areas from 7.8 psi to 9.0 psi by amending the EPA's regulations at 40 CFR 80.27(a)(2). The preamble for this rulemaking is organized as follows. Section III provides the history of federal gasoline volatility regulation. Section IV describes the policy regarding relaxation of volatility standards in ozone nonattainment areas that are redesignated as attainment areas. Section V provides information specific to Florida's request for the six counties currently subject to the 7.8 psi summertime RVP requirements. Section VI provides information specific to North Carolina's requests for the counties in the Triangle and Triad Areas that are currently subject to the 7.8 psi summertime RVP requirements. Section VII provides EPA's response to the adverse comment

received. Finally, Section VIII presents the final action in response to the requests from Florida and North Carolina.

III. History of the Gasoline Volatility Requirement

On August 19, 1987 (52 FR 31274), the EPA determined that gasoline nationwide was becoming increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline, referred to as volatile organic compounds (VOC), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function (thereby aggravating asthma or other respiratory conditions), increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Under section 211(c) of the CAA, the EPA promulgated regulations on March 22, 1989 (54 FR 11868) that set maximum limits for the RVP of gasoline sold during the regulatory control periods that were established on a state-by-state basis in the final rule. The regulatory control periods addressed the portion of the year when peak ozone concentrations were expected. These regulations constituted Phase I of a two-phase nationwide program, which was designed to reduce the volatility of commercial gasoline during the high ozone season. On June 11, 1990 (55 FR 23658), the EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the state, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS).

The 1990 CAA Amendments established a new section, 211(h), to address fuel volatility. Section 211(h) requires the EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. Section 211(h) prohibits the EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that the Agency may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), the EPA modified the Phase II volatility regulations to be consistent with section 211(h) of the CAA. The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658), which included the 7.8 psi ozone season limitation for certain areas. As stated in the preamble to the Phase II volatility controls and reiterated in the proposed change to the volatility standards published in 1991, the EPA will rely on states to initiate changes to the volatility program. The EPA's policy for approving such changes is described in Section IV of this preamble.

Florida and North Carolina initiated these changes by requesting that the EPA relax the 7.8 psi RVP standard for counties that are in ozone maintenance areas. Accordingly, the States revised their original modeling and maintenance demonstrations for these areas to reflect continued attainment under the relaxed 9.0 psi RVP standard that the States have requested. See Section V of this action for information specific to Florida's request for the six counties currently subject to the 7.8 psi summertime RVP requirements. See Section VI of this action for

information specific to North Carolina's requests for the counties in the Triangle and Triad Areas that are currently subject to the 7.8 psi summertime RVP requirements.

IV. The EPA's Policy Regarding Relaxation of Volatility Standards in Ozone

Nonattainment Areas that are Redesignated as Attainment Areas

As stated in the preamble for the EPA's amended Phase II volatility standards (56 FR 64706), any change in the volatility standard for a nonattainment area that was subsequently redesignated as an attainment area must be accomplished through a separate rulemaking that revises the applicable standard for that area. Thus, for former 1-hour ozone nonattainment areas where the EPA mandated a Phase II volatility standard of 7.8 psi RVP in the December 12, 1991 rulemaking, the 7.8 psi RVP will remain in effect, even after such an area is redesignated to attainment, until a separate rulemaking is completed that revises the RVP standard in that area from 7.8 psi to 9.0 psi.

As explained in the December 12, 1991, rulemaking, the EPA believes that relaxation of an applicable RVP standard is best accomplished in conjunction with the redesignation process. In order for an ozone nonattainment area to be redesignated as an attainment area, section 107(d)(3) of the Act requires the state to make a showing, pursuant to section 175A of the Act, that the area is capable of maintaining attainment for the ozone NAAQS for ten years. Depending on the area's circumstances, this maintenance plan will either demonstrate that the area is capable of maintaining attainment for ten years without the more stringent volatility standard or that the more stringent volatility standard may be necessary for the area to maintain its attainment with the ozone NAAQS. Therefore, in the context of a request for redesignation, the EPA will not relax the volatility standard unless the state requests a relaxation and the

maintenance plan demonstrates, to the satisfaction of the EPA, that the area will maintain attainment for ten years without the need for the more stringent volatility standard.

V. The EPA's Analysis of Florida's Request to Relax the Federal RVP Requirements in the State

On November 6, 1991, the EPA designated and classified the Southeast Florida area (i.e., Broward, Dade and Palm Beach counties) as Moderate; the Jacksonville area (i.e., Duval County) as Transitional; and the Tampa area (i.e., Hillsborough and Pinellas counties) as Marginal nonattainment areas for the 1-hour ozone NAAQS. See 56 FR 56694 (November 6, 1991). Among the requirements applicable to nonattainment areas for the 1-hour ozone NAAQS was the requirement to meet certain RVP standards for gasoline sold commercially during the high ozone season. See 55 FR 23658 (June 11, 1990). Thus, the RVP requirements for gasoline sold in these three 1-hour ozone nonattainment areas was 7.8 psi from June 1 through September 15 of each year. Subsequently, each area was redesignated to attainment for the 1-hour ozone NAAQS.¹ Florida's redesignation requests did not include a request for relaxation of the gasoline volatility standard.^{2,3}

On August 15, 2013, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted a request for the EPA to relax the Federal RVP requirement of 7.8 psi in Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas Counties in Florida. The State also submitted a technical analysis which demonstrated that the less-stringent RVP in these counties would not interfere with continued maintenance of the 1997

¹ 60 FR 41, (January 3, 1995); 60 FR 10326 (February 24, 1995); and 60 FR 62748 (December 7, 1995), respectively).

² Effective on June 15, 2004, Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas Counties were designated unclassifiable/attainment for the 1997 8-hour ozone NAAQS. See 69 FR 23857.

³ Effective on July 20, 2012, the same counties were designated as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. See 77 FR 30088.

8-hour ozone NAAQS or any other applicable standard.⁴ Specifically, the State updated the 10-year maintenance plans that were submitted for the three 1-hour ozone maintenance areas under section 110(a)(1) of the CAA for the 1997 ozone NAAQS.⁵ As required, these section 110(a)(1) maintenance plans provided for continued attainment and maintenance of the 1997 8-hour ozone NAAQS for at least 10 years from the effective date of these areas' designation as attainment for the 1997 8-hour ozone NAAQS. These plans also included components demonstrating how each area will continue to attain the 1997 8-hour ozone NAAQS, and provided contingency measures should an area violate the NAAQS. Florida's previous ozone redesignation requests and maintenance plans for these areas did not remove the 7.8 psi RVP standard. See 75 FR 29671 (May 27, 2010).

As mentioned above, on August 15, 2013, FDEP submitted changes to the three CAA section 110(a)(1) maintenance plans that collectively cover Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas Counties in Florida. Florida's August 15, 2013, SIP revision modifies the existing section 110(a)(1) maintenance plans to account for a less stringent applicable RVP gasoline requirement of 9.0 psi for these areas. Specifically, Florida's August 15, 2013, SIP revision included an evaluation of the impact that the removal of the 7.8 psi RVP requirement would have on maintenance of the 1997 and 2008 ozone standards, and on other applicable NAAQS. The EPA evaluated Florida's August 15, 2013, SIP revision in a previous rulemaking that was subject to public notice-and-comment and no comments were received. The EPA approved Florida's August 15, 2013, SIP revision on January 6, 2014. See 79 FR 573. In this

⁴ Maintenance areas for the 1-hour ozone standard designated attainment/unclassifiable for the 1997 8-hour ozone standard are required to submit a maintenance plan under section 110(a)(1) of the CAA demonstrating maintenance out to 10 years after designation. See 69 FR 23996 (April 30, 2004).

⁵ The EPA has determined that redesignated 1-hour ozone attainment areas that are designated 8-hour ozone attainment areas may rely on the section 110(a)(1) maintenance plan for purposes of requesting relaxation of the more stringent volatility standard. See 73 FR 8202, 8205 (February 13, 2008).

final action, based on the previous approval of Florida's August 15, 2013, SIP revision, and the fact that the areas are currently attaining all ozone NAAQS, the EPA is approving Florida's request to relax the high ozone season RVP standard for Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas counties from 7.8 psi to 9.0 psi.

VI. The EPA's Analysis of North Carolina's Requests to Relax the Federal RVP Requirements in the Triangle and Triad Areas

The following two sections provide the EPA's analysis of North Carolina's requests to relax the Federal RVP requirements in the Triangle and Triad Areas.

A. The EPA's Analysis of North Carolina's Requests To Relax the Federal RVP

Requirement in the Triangle Area

On November 6, 1991, the EPA designated and classified Durham and Wake Counties, and the Dutchville Township portion of Granville County (also known as the Triangle Area at the time) as a Moderate nonattainment area for the 1-hour ozone NAAQS. See 56 FR 56694 (November 6, 1991). Among the requirements applicable to nonattainment areas for the 1-hour ozone NAAQS was the requirement to meet certain RVP standards for gasoline sold commercially during the high ozone season. See 55 FR 23658 (June 11, 1990). Thus, the RVP requirement for gasoline sold in the Triangle Area was 7.8 psi from June 1 through September 15 of each year. On April 18, 1994, the Triangle Area was redesignated to attainment for the 1-hour ozone standard. See 59 FR 18300. North Carolina's redesignation request for the Triangle Area did not include a request for relaxation of the gasoline volatility standard.^{6,7,8}

⁶ Effective on June 15, 2004, the nonattainment area for the Triangle Area for the 1997 ozone NAAQS was expanded from Durham and Wake Counties, and the Dutchville Township portion of Granville County, to also include Franklin, Johnston, Orange, and Person Counties, and the remainder of Granville County and Baldwin, Center, New Hope and Williams Townships in Chatham County. See 69 FR 23857.

⁷ On December 26, 2007 the Triangle Area was redesignated to attainment for the 1997 8-hour ozone NAAQS. See 72 FR 72948.

On March 27, 2013, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), submitted a request for the EPA to relax the Federal RVP requirement of 7.8 psi in Wake and Durham Counties, and the Dutchville Township portion of Granville County that was originally included in the 1-hour ozone nonattainment area. The State also submitted a technical analysis that demonstrated that the less-stringent RVP in these counties would not interfere with continued maintenance of the 1997 8-hour ozone NAAQS or any other applicable standard. Specifically, the State updated the 10-year maintenance plan that was submitted for the Triangle 1997 8-hour ozone maintenance area under section 175A of the CAA. As required, this section 175A maintenance plan provided for continued attainment and maintenance of the 1997 8-hour ozone NAAQS for at least 10 years from the EPA's redesignation of the area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. This plan also included components demonstrating how the area will continue to attain the 1997 8-hour ozone NAAQS, and provided contingency measures should the area violate the NAAQS. North Carolina's previous ozone redesignation requests and maintenance plans for this area did not remove the 7.8 psi RVP standard. See 72 FR 72948 (December 26, 2007).

As mentioned above, on March 27, 2013, NC DENR submitted changes to the section 175A maintenance plan for the Triangle Area. North Carolina's March 27, 2013, SIP revision modifies the existing section 175A maintenance plan to account for a less stringent applicable RVP gasoline requirement of 9.0 psi for the Triangle Area. Specifically, North Carolina's March 27, 2013, SIP revision included an evaluation of the impact that the removal of the 7.8 psi RVP requirement would have on maintenance of the 1997 and 2008 ozone standards, and on other

⁸ Effective on July 20, 2012, the same counties were designated as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. See 77 FR 30088.

applicable NAAQS. The EPA evaluated North Carolina's March 27, 2013, SIP revision in a previous rulemaking that was subject to public notice-and-comment. No adverse comments and one supportive comment were received on that proposed action. The EPA approved North Carolina's March 27, 2013, SIP revision on January 2, 2014. See 79 FR 47. In this action, based on the EPA's previous approval of North Carolina's March 27, 2013, SIP revision, and the fact that the Triangle Area is currently attaining all ozone NAAQS, the EPA is approving North Carolina's request to relax the RVP standard for Wake and Durham Counties, and a portion of Granville County in North Carolina from 7.8 psi to 9.0 psi from June 1 through September 15 of each year.

B. The EPA's Analysis of North Carolina's Requests to Relax the Federal RVP Requirement in the Triad Area

On November 6, 1991, the EPA designated Davidson, Forsyth and Guilford counties in their entirety and the portion of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in the Triad Area as a Moderate nonattainment area for the 1-hour ozone NAAQS. See 56 FR 56694 (November 6, 1991). Among the requirements applicable to nonattainment areas for the 1-hour ozone NAAQS was the requirement to meet certain RVP standards for gasoline sold commercially during the ozone season. See 55 FR 23658 (June 11, 1990). Thus, the RVP requirement for gasoline sold in the Triad Area was 7.8 psi from June 1 through September 15 of each year. On April 18, 1994, the Triad Area was redesignated to attainment for the 1-hour ozone standard. See 59 FR 18300. North Carolina's redesignation request for the Triad Area did not include a request for the relaxation of the gasoline volatility standard.^{9,10,11,12}

⁹ Effective June 15, 2004 for the 1997 ozone NAAQS, the Triad Area was designated as nonattainment with a deferred effective date as part of the Early Action Compact (EAC) program. As part of this action the Triad Area

On April 12, 2013, the State of North Carolina, through NC DENR, submitted a request for the EPA to relax the Federal RVP requirement of 7.8 psi in Davidson, Forsyth and Guilford Counties and the relevant portion of Davie County. The State also submitted a technical analysis which demonstrated that the less-stringent RVP in the aforementioned counties would not interfere with continued maintenance of the 1997 8-hour ozone NAAQS or any other applicable standard. Specifically, the State updated the 10-year maintenance plan that was submitted for the Triad 1-hour ozone maintenance area under section 110(a)(1) of the CAA for the 1997 ozone NAAQS.¹³ As required, this section 110(a)(1) maintenance plan provided for continued attainment and maintenance of the 1997 8-hour ozone NAAQS for at least 10 years from the effective date of the area's designation as attainment for the 1997 8-hour ozone NAAQS. This plan also included components demonstrating how the area will continue to attain the 1997 8-hour ozone NAAQS, and provided contingency measures should the area violate the NAAQS. North Carolina's previous ozone redesignation request and maintenance plan for this area did not remove the 7.8 psi RVP standard. See 77 FR 3611 (January 25, 2012).

As mentioned above, on April 12, 2013, NC DENR submitted changes to the section 110(a)(1) maintenance plan for the Triad Area. North Carolina's April 12, 2013, SIP revision modifies the existing section 110(a)(1) maintenance plan to account for a less stringent applicable RVP gasoline requirement of 9.0 psi for the area. Specifically, North Carolina's April

was expanded to include the entire county of Davie, and Alamance, Caswell, Randolph, and Rockingham Counties in their entirety. See 69 FR 23857.

¹⁰ For more information on the EAC program, see http://www.epa.gov/airquality/eac/fs20080331_eac.html.

¹¹ The Triad Area attained the 1997 ozone NAAQS and on February 2, 2008, the EPA finalized an action for 13 nonattainment areas with deferred effective dates, including the Triad Area, designating these areas attainment for the 1997 8-hour ozone NAAQS. However, as a former 1-hour ozone maintenance area the Triad Area was required to submit a 10-year maintenance plan under section 110(a)(1) of the CAA. See 73 FR 17897.

¹² Effective July 20, 2012, the Triad Area counties were designated as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. See 77 FR 30088.

¹³ The EPA has determined that redesignated 1-hour ozone attainment areas that are designated 8-hour ozone attainment areas may rely on the section 110(a)(1) maintenance plan for purposes of requesting relaxation of the more stringent volatility standard. 73 FR 8202, 8205 (February 13, 2008).

12, 2013, SIP revision included an evaluation of the impact that the removal of the 7.8 psi RVP requirement would have on maintenance of the 1997 and 2008 ozone standards, and on other applicable NAAQS. The EPA evaluated North Carolina's April 12, 2013, SIP revision in a previous rulemaking that was subject to public notice-and-comment. No adverse comments and one supportive comment were received on that proposed action. The EPA approved North Carolina's April 12, 2013, SIP revision on January 24, 2014. See 79 FR 4082. In this action, based on the previous approval of North Carolina's April 12, 2013, SIP revision, and the fact that the Triad Area is currently attaining all ozone NAAQS, the EPA is approving North Carolina's request to relax the high ozone season RVP standard for Davidson, Forsyth and Guilford Counties and a portion of Davie County from 7.8 psi to 9.0 psi.

VII. Response to Comments

On March 31, 2014 (79 FR 17889), the EPA published a direct final rule to approve requests from Florida and North Carolina for the EPA to relax the RVP standard in six counties in Florida and in the Triangle Area and Triad Area in North Carolina. The EPA published a parallel proposal in the event that adverse comments were received such that the direct final rule would need to be withdrawn. Specifically, in the direct final rule, the EPA stated that if adverse comments were received by April 30, 2014, the direct final rule would be withdrawn and not take effect. The EPA further stated that the corresponding proposed rule would remain in effect and that any adverse comments received would be responded to in a subsequent final rule provided the EPA was able to address such comments.¹⁴ On March 29, 2014, EPA received comments on the rulemaking. Although, for the reasons discussed below, these comments are outside of the scope of today's action, the EPA viewed these comments as adverse. Therefore,

¹⁴ The EPA also noted that an additional public comment period would not be instituted for the action.

the EPA has withdrawn the direct final rule in a separate Federal Register notice and is providing a summary of comments received and the EPA's responses to the comments in today's action.

Comments: The commenter stated "EPA must disapprove this proposal because EPA has failed to conduct a Clean Air Act 110(l) analysis of the impacts the increased emissions will have on the 2008 ozone NAAQS. In addition, EPA would need to reconsider its analysis for Florida and North Carolina's CAA 110(a)(2)(D)(i) for the 1997 ozone NAAQS and consider this rule rollback for 110(a)(2)(D)(i) for the 2008 ozone NAAQS. This includes impacts in downwind nonattainment areas. Furthermore, ozone monitors in Forsyth and Guilford Counties have 2010-2012 design values above the 2008 ozone NAAQS."

Response: The EPA disagrees with the commenter's assertions that EPA should disapprove the proposal, and generally believes these comments are beyond the scope of today's action. Section 110(l) of the Clean Air Act applies to revisions to a state implementation plan submitted by a State. However, this rulemaking does not approve any SIP revisions. Rather, it revises federal regulations (40 CFR Part 80) applicable to gasoline introduced into commerce in certain areas. Moreover, contrary to the commenter's claims, EPA did evaluate the impacts of change to the summertime RVP (consistent with CAA section 110(l)) in relation to the States' requests for the EPA to relax the RVP requirements for six counties in Florida and for the Triad and Triangle Areas in North Carolina. The EPA's analyses in relation to the States' requests for the EPA to relax the RVP requirement in the aforementioned areas were included in previous rulemakings (see 79 FR 47 (January 2, 2014), 79 FR 573 (January 6, 2014), and 79 FR 4082 (January 24, 2014)) through which the EPA approved Florida and North Carolina's SIP revisions that address these changes. The EPA's analyses (which also included evaluation of impacts to the 2008 8-hour ozone standard in addition to other applicable requirements of the CAA) for each area were

subject to a 30-day public notice-and-comment, and no adverse comments were received on any of the proposed actions. The opportunity for the commenter to express concerns regarding the requirements of Section 110(l), and the EPA's analyses of whether the change to the Federal RVP requirements for the six counties in Florida and for the Triangle and the Triad areas would interfere with attainment or maintenance of the NAAQS was during the EPA's previous rulemakings where the EPA specifically solicited comment on this. The notices for this rulemaking did not reopen any of those actions.

With regard to the commenter's assertion that "...ozone monitors in Forsyth and Guilford Counties have 2010-2012 design values above the 2008 ozone NAAQS," we note (as included in the EPA's rulemaking for the Triad area (79 FR 4082)) that based on the 2011-2013 design values, the ozone monitors in Forsyth and Guilford Counties were not above the 2008 8-hour ozone NAAQS.

The commenter also mentions that "EPA would need to reconsider its analysis for Florida and North Carolina's CAA 110(a)(2)(D)(i) for the 1997 ozone NAAQS and consider this rule rollback for 110(a)(2)(D)(i) for the 2008 ozone NAAQS." This comment is not directly relevant to this action as the comment does not address whether or not the EPA should finalize the proposed action, but instead identifies additional actions the commenter believes the EPA would need to take if this action is finalized. Also, the comment does not clearly identify any specific analysis that should be reconsidered by the EPA. The EPA is currently working on a proposed rule to quantify state obligations with respect to section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS and will be accepting public comment on all aspects of that proposal. The EPA has not

recently acted on SIP submissions addressing the requirements of section 110(a)(2)(D)(i) with respect to the 1997 ozone NAAQS for either Florida or North Carolina.¹⁵

VIII. Final Action

The EPA is taking final action to approve requests from Florida and North Carolina for the EPA to relax the RVP applicable to gasoline introduced into commerce from June 1 to September 15 of each year in six counties in Florida, and in the counties of the Triangle and Triad Areas in North Carolina. Specifically, this action amends the applicable RVP standard from 7.8 psi to 9.0 psi provided at 40 CFR 80.27(a)(2) for Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas counties in Florida; Wake and Durham Counties, and a portion of Dutchville Township in Granville County in the Triangle Area in North Carolina; and Davidson, Forsyth and Guilford Counties and a portion of Davie County in the Triad Area.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

As of January 24, 2014, the Office of Management and Budget (OMB), determined that this action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

¹⁵Florida and North Carolina both submitted SIPs intended to address the requirements of 110(a)(2)(D)(i)(I) through participation in the CAIR trading programs. These SIP submissions were approved by EPA. *See* 72 FR 58016 (October 12, 2007) (Florida), 72 FR 56914 (October 5, 2007) (North Carolina). The D.C. Circuit, however, subsequently remanded CAIR, finding that participation in the CAIR trading programs could not be said to satisfy states’ 110(a)(2)(D)(i)(I) obligations. In response to the remand of CAIR, the EPA has finalized a new rule to address the interstate transport of NO_x and SO₂ in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (“the Cross-State Air Pollution Rule” or CSAPR). This rule was vacated by the D.C. Circuit in 2012. *EME Homer City Generation L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert. granted* 133 S.Ct. 2857 (2013) On April 29, 2014 the Supreme Court reversed the judgment of the U.S. Court of Appeals for the D.C. Circuit and remanded the case for further proceedings. (*EPA et al. v. EME Homer City Generation L.P., et al.*, Slip Op.No. 12-1182, S. Ct. 2013, April 29, 2014)

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are refiners, importers or blenders of gasoline that choose to produce or import low RVP gasoline for sale in the Florida and North Carolina areas and gasoline distributors and retail stations in those areas.

This action will relax the Federal RVP standard for gasoline sold in portions of Florida and North Carolina, during the ozone control season (June 1 to September 15), from 7.8 psi to

9.0 psi, and is therefore expected not to have a significant economic impact on a substantial number of small entities. The rule does not impose any requirements or create impacts on small entities beyond those, if any, already required by or resulting from the CAA Section 211(h) Volatility Control program.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's final rule affects portions of Florida and North Carolina of which the EPA estimates lower fuel costs as a result of this action, therefore reducing cost on businesses and consumers. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the rule relaxes an existing standard and affects only the gasoline industry.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable

process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This action does not have tribal implications, as specified in Executive Order 13175.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule will relax the applicable volatility standard of gasoline during the summer possibly resulting in slightly higher mobile source emissions. However, Florida and North Carolina have demonstrated in maintenance plans that this action will not interfere with attainment of the 8-hour ozone NAAQS and therefore disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United

States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective on May 30, 2014.

L. Petitions for Judicial Review

Section 307 (b) (1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”

This rule is “nationally applicable” within the meaning of section 307(b)(1). This rule establishes RVP requirements for multiple counties in different States. At the core of this rulemaking is the EPA’s interpretation of the requirements of section 211(h) of the CAA, and its application of that interpretation to different areas of the country.

For the same reasons, the Administrator also is determining that this action is of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that an action is of “nationwide scope or effect” would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95-294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402-03. Here, the

scope and effect of this rulemaking extends to two different judicial circuits. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of “nationwide scope or effect” and for venue to be in the D.C. Circuit.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the Federal Register. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

X. Legal Authority and Statutory Provisions

Authority for this final action is in sections 211(h) and 301(a) of the CAA, 42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 15, 2014.

Gina McCarthy,
Administrator

Title 40, chapter I, part 80 of the Code of Federal Regulations is amended as follows:

PART 80--REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

2. In §80.27(a)(2)(ii), the table is amended by:

a. Revising the entry for Florida;

b. Revising the entry for North Carolina; and

c. Adding footnotes 5, 6, and 7.

The revisions and additions read as follows:

§80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

(2) * * *

(ii) * * *

Applicable Standards¹ 1992 and Subsequent Years

State	May	June	July	August	September
* * * * *					
Florida	9.0	9.0	9.0	9.0	9.0
Southeast Florida, Tampa Bay and Jacksonville ⁵	9.0	9.0	9.0	9.0	9.0
* * * * *					
North Carolina					
Triad ⁶	9.0	9.0	9.0	9.0	9.0
Triangle ⁷	9.0	9.0	9.0	9.0	9.0
All other volatility nonattainment areas	9.0	7.8	7.8	7.8	7.8

* * * * *

¹ Standards are expressed in pounds per square inch (psi).

* * * * *

⁵ The standard for Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas Counties from June 1 until September 15 in 1992 through 2013 was 7.8 psi.

⁶ The standard for Davidson, Forsyth and Guilford Counties and a portion of Davie County from June 1 until September 15 in 1992 through 2013 was 7.8 psi.

⁷ The standard for Durham and Wake Counties, and a portion of Dutchville Township in Granville County from June 1 until September 15 in 1992 through 2013 was 7.8 psi.

* * * * *

[FR Doc. 2014-11911 Filed 05/21/2014 at 8:45 am; Publication Date: 05/22/2014]